

AMENDED IN ASSEMBLY JULY 1, 2009

AMENDED IN SENATE MAY 20, 2009

AMENDED IN SENATE APRIL 23, 2009

AMENDED IN SENATE APRIL 13, 2009

SENATE BILL

No. 407

Introduced by Senator Padilla

February 26, 2009

An act to amend Section 1102.6 of, and to add Article 1.4 (commencing with Section 1101.1) to Chapter 2 of Title 4 of Part 4 of Division 2 of, the Civil Code, relating to water conservation.

LEGISLATIVE COUNSEL'S DIGEST

SB 407, as amended, Padilla. Property transfers: plumbing fixtures replacement.

Existing

(1) *Existing* law authorizes public entities that supply water, by the adoption of an ordinance or resolution pursuant to specified procedures, to adopt and enforce a water conservation program. Existing law requires certain disclosures to be made upon the transfer of real estate. Existing law requires that all water closets or urinals sold or installed in the state use no more than an average of 1.6 gallons or one gallon per flush, respectively.

This bill would require that, on and after January 1, 2014, all plumbing fixtures in any residential or commercial real property that are not water-conserving plumbing fixtures be replaced prior to the time of sale or transfer by the property owner with water-conserving plumbing fixtures, as defined, with specified exceptions. The bill would include within these exceptions, among others, a sale or a transfer pursuant to

nonjudicial foreclosure and a sale or transfer in which the requirements of this article would impose a significant, financial hardship on the seller or transferor. The bill would require that compliance with this requirement be included as a condition of escrow for any sale or transfer. The bill would require a seller or transferor of real property to certify to the prospective purchaser or transferee, in writing, that the requirement has been satisfied. The bill would except from its provisions registered historical sites, certain transfers, including those between specified family members, and transfers in which a licensed plumber certifies that, due to the age or configuration of the property or its plumbing, installation of water-conserving plumbing fixtures is not technically feasible. The bill would require a real estate agent to disclose the requirements described above and would provide that an agent has no other liability in this connection. The bill would also make a statement of findings and declarations *establish requirements for residential and commercial real property built and available for use on or before January 1, 1994, for replacing plumbing fixtures that are not water conserving, as defined as noncompliant plumbing fixtures. On and after January 1, 2014, the bill would require, for all building alterations or improvements to single-family residential real property, as defined, that water-conserving plumbing fixtures replace other noncompliant plumbing fixtures as a condition for issuance of a certificate of final completion and occupancy or final permit approval by the local building department. By creating a new duty to inspect for local officials, this bill would impose a state-mandated local program. The bill would require, on or before January 1, 2017, that all noncompliant plumbing fixtures in any single-family residential real property shall be replaced by the property owner with water-conserving plumbing fixtures.*

The bill would require, on or before January 1, 2019, that all noncompliant plumbing fixtures in multifamily residential real property and commercial real property, as defined, be replaced with water-conserving plumbing fixtures. The bill would require, on and after January 1, 2014, for specified building alterations or improvements to multifamily residential real property and commercial real property, that water-conserving plumbing fixtures replace other noncompliant plumbing fixtures as a condition for issuance of a certificate of final completion and occupancy or final permit approval by the local building department. By creating a new duty to inspect for local officials, this bill would impose a state-mandated local program.

The bill would require, on and after January 1, 2011, that a seller or transferor of single-family residential real property, multifamily residential real property, or commercial real property disclose to a purchaser or transferee, in writing, specified requirements for replacing plumbing fixtures, and whether the real property includes noncompliant plumbing. The bill would provide that the application of its requirements may be postponed up to one year, as specified, with respect to a building for which a demolition permit has been issued. The bill would permit a city or county to enact a local ordinance or policy that promotes compliance with the bill's provisions or that will result in greater water savings than otherwise provided by the bill. The bill would provide that it does not preempt local ordinances requiring from retrofit of noncompliant plumbing fixtures adopted prior to July 1, 2009, that are at least as restrictive as its provisions.

(2) Existing law requires certain transferors of real property improved with 1 to 4 dwelling units to make specified disclosures to prospective transferees regarding the characteristics of the property and prescribes forms for the purpose of making these disclosures.

This bill would revise the disclosure form described above to include references to water-conserving plumbing fixtures.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Article 1.4 (commencing with Section 1101.1)
- 2 is added to Chapter 2 of Title 4 of Part 4 of Division 2 of the Civil
- 3 Code, to read:

Article 1.4. *Installation of Water Use Efficiency Improvements
Upon Transfer*

1101.1. The Legislature finds and declares all of the following:

(a) Adequate water supply reliability for all uses is essential to the future economic and environmental health of California.

(b) Environmentally sound strategies to meet future water supply and wastewater treatment needs are key to protecting and restoring aquatic resources in California.

(c) There is a pressing need to address water supply reliability issues raised by growing urban areas.

(d) Economic analysis by urban water agencies has identified urban water conservation as a cost-effective approach to addressing water supply needs.

(e) There are many water conservation practices that produce significant energy and other resource savings that should be encouraged as a matter of state policy.

(f) Since the 1991 signing of the “Memorandum of Understanding Regarding Urban Water Conservation in California,” many urban water and wastewater treatment agencies have gained valuable experience that can be applied to produce significant statewide savings of water, energy, and associated infrastructure costs. This experience indicates a need to regularly revise and update water conservation methodologies and practices.

(g) To address these concerns, it is the intent of the Legislature ~~to require property owners to retrofit outdated, high water use plumbing fixtures upon resale, and that sellers or transferors be required to disclose these upgrades upon resale.~~ *to require that residential and commercial real property built and available for use or occupancy on or before January 1, 1994, be equipped with water-conserving plumbing fixtures.*

(h) It is further the intent of the Legislature that retail water suppliers are encouraged to provide incentives, financing mechanisms, and funding to assist property owners with these retrofit obligations.

~~1101.2. (a) On and after January 1, 2014, all noncompliant plumbing fixtures in any residential or commercial real property shall be replaced prior to the time of sale or transfer by the property owner with water-conserving plumbing fixtures.~~

1 ~~(b) Compliance with this section shall be included as a condition~~
2 ~~of escrow for any sale or transfer.~~

3 ~~(c) A seller or transferor of real property shall certify to the~~
4 ~~prospective purchaser or transferee, in writing, that the~~
5 ~~requirements of this section have been satisfied. This certification~~
6 ~~may be included in other transactional documents.~~

7 *1101.2. Except as provided in Section 1101.7, this article shall*
8 *apply to residential and commercial real property built and*
9 *available for use on or before January 1, 1994.*

10 *1101.3. For the purposes of this article:*

11 *(a) "Commercial real property" means any real property that*
12 *is improved with, or consisting of, a building that is intended for*
13 *commercial use, including hotels and motels, that is not a*
14 *single-family residential real property or a multifamily residential*
15 *real property.*

16 *(b) "Multifamily residential real property" means any real*
17 *property that is improved with, or consisting of, a building*
18 *containing more than one unit that is intended for human*
19 *habitation, or any mixed residential-commercial buildings or*
20 *portions thereof that are intended for human habitation.*
21 *Multifamily residential real property includes residential hotels*
22 *but does not include hotels and motels that are not residential*
23 *hotels.*

24 ~~(a)~~
25 *(c) "Noncompliant plumbing fixture" means any of the*
26 *following:*

27 *(1) Any toilet manufactured to use more than 1.6 gallons of*
28 *water per flush.*

29 *(2) Any urinal manufactured to use more than one gallon of*
30 *water per flush.*

31 *(3) Any showerhead manufactured to have a flow capacity of*
32 *more than 2.5 gallons of water per minute.*

33 *(4) Any interior faucet that emits more than 2.2 gallons of water*
34 *per minute.*

35 *(d) "Single-family residential real property" means any real*
36 *property that is improved with, or consisting of, a building*
37 *containing not more than one unit that is intended for human*
38 *habitation.*

39 ~~(b)~~

1 (e) “Water-conserving plumbing fixture” means any fixture that
2 is in compliance with current building standards applicable to a
3 newly constructed ~~residential or commercial~~ real property of the
4 same type.

5 (e)

6 (f) “Sale or transfer” means the sale or transfer of an entire real
7 property estate or the fee interest in that real property estate and
8 does not include the sale or transfer of a partial interest, including
9 a leasehold.

10 1101.4. (a) *On and after January 1, 2014, for all building*
11 *alterations or improvements to single-family residential real*
12 *property, as a condition for issuance of a certificate of final*
13 *completion and occupancy or final permit approval by the local*
14 *building department, the permit applicant shall replace all*
15 *noncompliant plumbing fixtures with water-conserving plumbing*
16 *fixtures.*

17 (b) *On or before January 1, 2017, noncompliant plumbing*
18 *fixtures in any single-family residential real property shall be*
19 *replaced by the property owner with water-conserving plumbing*
20 *fixtures.*

21 (c) *On and after January 1, 2011, a seller or transferor of*
22 *single-family residential real property shall disclose in writing to*
23 *the prospective purchaser or transferee, pursuant to Section*
24 *1102.6, the requirements of subdivision (b) and whether the real*
25 *property includes any noncompliant plumbing fixtures.*

26 1101.5. (a) *On or before January 1, 2019, all noncompliant*
27 *plumbing fixtures in any multifamily residential real property and*
28 *in any commercial real property shall be replaced with*
29 *water-conserving plumbing fixtures.*

30 (b) (1) *On and after January 1, 2014, all noncompliant*
31 *plumbing fixtures in any multifamily residential real property and*
32 *any commercial residential real property shall be replaced with*
33 *water-conserving plumbing fixtures in the following circumstances:*

34 (A) *For building additions in which the sum of concurrent*
35 *building permits by the same permit applicant would increase the*
36 *floor area of the space in a building by more than 10 percent, the*
37 *building permit applicant shall replace all noncompliant plumbing*
38 *fixtures in the building.*

39 (B) *For building alterations or improvements in which the total*
40 *construction cost estimated in the building permit is greater than*

1 *one hundred fifty thousand dollars (\$150,000), the building permit*
2 *applicant shall replace all noncompliant plumbing fixtures that*
3 *service the specific area of the improvement.*

4 *(C) Notwithstanding subparagraph (A) or (B), for any*
5 *alterations or improvements to a room in a building that require*
6 *a building permit and that room contains any noncompliant*
7 *plumbing fixtures, the building permit applicant shall replace all*
8 *noncompliant plumbing fixtures in that room.*

9 *(2) Replacement of all noncompliant plumbing fixtures with*
10 *water-conserving plumbing fixtures, as described in paragraph*
11 *(1), shall be a condition for issuance of a certificate of final*
12 *completion and occupancy or final permit approval by the local*
13 *building department.*

14 *(c) On and after January 1, 2011, a seller or transferor of*
15 *multifamily residential real property or of commercial real*
16 *property shall disclose to the prospective purchaser or transferee,*
17 *in writing, the requirements of subdivision (a) and whether the*
18 *property includes any noncompliant plumbing fixtures. This*
19 *disclosure may be included in other transactional documents.*

20 *1101.6. The duty of an owner or building permit applicant to*
21 *comply with the requirements of this article shall be postponed*
22 *for one year from the date of issuance of a demolition permit for*
23 *the building. If the building is demolished within the one-year*
24 *postponement, the requirements of this article shall not apply. If*
25 *the building is not demolished after the expiration of one year, the*
26 *provisions of this article shall apply, subject to appeal to the local*
27 *building department, even though the demolition permit is still in*
28 *effect or a new demolition permit has been issued.*

29 ~~1101.4.~~

30 *1101.7. This article shall not apply to any of the following:*

31 *(a) Registered historical sites.*

32 ~~*(b) Transfers that are required to be preceded by the furnishing*~~
33 ~~*to a prospective transferee of a copy of a public report pursuant to*~~
34 ~~*Section 11018.1 of the Business and Professions Code and transfers*~~
35 ~~*which can be made without a public report pursuant to Section*~~
36 ~~*11010.4 of the Business and Professions Code.*~~

37 ~~*(c) Transfers by a fiduciary in the course of the administration*~~
38 ~~*of a decedent's estate, guardianship, conservatorship, or trust.*~~

~~(d) Transfers from one coowner to one or more other coowners, or from one or more coowners into or from a revocable trust, if the trust is for the benefit of the grantor or grantors.~~

~~(e) Transfers made by a trustor to fund an inter vivos trust.~~

~~(f) Transfers made to a spouse, to a registered domestic partner as defined in Section 297 of the Family Code, or to a person or persons in the lineal line of consanguinity of one or more of the transferors.~~

~~(g) Transfers between spouses or registered domestic partners resulting from a decree of dissolution of marriage or domestic partnership, or a decree of legal separation or from a property settlement agreement incidental to a decree.~~

~~(h) Transfers in~~

~~(b) Real property for which a licensed plumber certifies that, due to the age or configuration of the property or its plumbing, installation of water-conserving plumbing fixtures is not technically feasible.~~

~~(i) A sale or transfer in which the requirements of this article would impose a significant, financial hardship on the seller or transferor, and the seller or transferor has informed the prospective purchaser or transferee that this article does not apply due to that financial hardship.~~

~~(j) A sale or transfer of real property pursuant to a nonjudicial foreclosure governed by Article 1 (commencing with Section 2920) of Chapter 2 of Title 14 of Part 4.~~

~~(k) A sale or transfer in which the beneficiary agrees to release its lien on a property in return for payment of an amount less than the secured obligation.~~

~~(l) A sale or transfer of real property for which a notice of default, filed pursuant to Section 2924, is pending.~~

~~1101.5. (a) Any real estate agent, real estate broker, or real estate salesperson, whether representing a transferor or transferee, or both, involved in the transfer of title to property subject to this chapter, shall give written notice to the transferee and transferor of the requirements of this article prior to the transfer of title to the property.~~

~~(b) The duty described in subdivision (a) is the only responsibility the real estate agent, real estate broker, or real estate salesperson has with regard to this article and the real estate agent, real estate broker, or real estate salesperson shall have no liability~~

1 for any transferor's failure to comply with any other provision of
2 this article.

3 (e) ~~Nothing in this section shall be construed to alter any existing~~
4 ~~duty of the transferring property owner, real estate agent, real estate~~
5 ~~broker, or real estate salesperson under any other provision of law.~~

6 ~~1101.6. This article does not preempt a city, county, or city and~~
7 ~~county from adopting or enforcing any retrofit requirements~~
8 ~~relating to noncompliant plumbing fixtures that result in an~~
9 ~~equivalent or greater amount of water savings than those provided~~
10 ~~for in this article.~~

11 (c) *A building for which water service is permanently*
12 *disconnected.*

13 *1101.8. A city, county, or city and county may do either of the*
14 *following:*

15 (a) *Enact local ordinances or establish policies that promote*
16 *compliance with this article.*

17 (b) *Enact local ordinances that will result in a greater amount*
18 *of water savings than those provided for in this article.*

19 *1101.9. This article does not preempt local ordinances*
20 *requiring retrofit of noncompliant plumbing fixtures adopted prior*
21 *to July 1, 2009, by a city, county, or city and county that are at*
22 *least as restrictive as the requirements of this article.*

23 *SEC. 2. Section 1102.6 of the Civil Code is amended to read:*

24 1102.6. The disclosures required by this article pertaining to
25 the property proposed to be transferred are set forth in, and shall
26 be made on a copy of, the following disclosure form:

1

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1 *SEC. 3. If the Commission on State Mandates determines that*
2 *this act contains costs mandated by the state, reimbursement to*
3 *local agencies and school districts for those costs shall be made*
4 *pursuant to Part 7 (commencing with Section 17500) of Division*
5 *4 of Title 2 of the Government Code.*

O